## REMARKS

The application has been revised in light of the Office Action mailed September 8, 2004. Claims 2-21 are currently pending in the application. By this amendment, Claims 3 and 14 have been amended to better define Applicant's invention and to patentably distinguish over the prior art. No new matter or issues have been introduced by this amendment document. In view of the amendments above and the remarks to follow, reconsideration and allowance of this application are respectfully requested. Accordingly, early and favorable consideration of this application is respectfully requested.

### Double Patenting

Claims 2-10, and 14-19, were rejected under the judicially created doctrine of obviousness-type double patenting in view of Claims 1-9 of U.S. Patent No. 6,319,266. A terminal disclaimer will be filed if still required upon an indication of the allowability of the claims.

### Allowable Subject Matter

Claim 20 was objected to as being dependent upon a rejected based claims, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### 35 U.S.C. § 102

**Danks et al.**

Claims 2-10, 14-19, and 21 were rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,868,773 (Danks et al.).

With regard to independent Claim 3 and Claims 2, and 4-10, which depend therefrom, the Danks et al. disclosure fails to disclose the requirements of Claim 3. The Danks et

al. patent does not disclose an obturator assembly of a trocar system, wherein the obturator assembly includes a latch mechanism disposed generally within an obturator housing, the latch mechanism including a release member having a button portion and a camming surface; wherein the button portion protrudes at least partially through an opening formed in the distally facing end surface of the obturator housing, the button portion being moveable from a first position extending outwardly from the distally facing end surface of the obturator housing to a second position wherein the button portion is positioned further within the obturator housing; and a latch operatively associated with the release member, the latch having a blocking surface and a mating surface, the mating surface cooperating with the camming surface of the release member such that application of a proximally directed force to the distal end of the button portion of the release member of the obturator assembly to move to the second position to impart vertical movement of the release member whereby the camming surface moves substantially laterally and biases the mating surface to move the latch such that the blocking surface permits axial movement of the shield, as recited in amended Claim 3.

In contrast, Danks et al. discloses obturator assembly 12 having latch means 33 disposed generally within a housing, wherein the latch means 33 includes biasing means 27, blocking member 25, actuation means 48, and linking member 24 linking actuation means 48 and blocking member 25. See Column 4, lines 36-42 and FIG. 2A. Nowhere does Danks et al. teach or suggest a latch mechanism including a release member having a button portion and a camming surface; wherein the button portion protrudes at least partially through an opening formed in the distally facing end surface of the obturator housing. More particularly, Danks et al. does not teach or suggest the application of a proximally directed force to the distal end of a button portion of the release member of the obturator assembly to move to a second portion to

impart vertical movement of the release member. In fact, the distal end 22 of linking member 24, in the Danks et al. device, engages with trigger 48 such that "[w]hen the trigger 48 is depressed and pushed forward toward the piercing tip 80, the linking member 24 is likewise pulled forward." Column 4, lines 53-55 and FIGS. 3A and 3B.

Accordingly, Claim 3 and Claims 2, 4-10, which depend therefrom, are believed to be unanticipated by, and otherwise allowable over, the Danks et al. patent. Therefore, reconsideration and withdrawal of the rejection is respectfully requested and allowance of the claims is earnestly solicited.

With regard to independent Claim 14 and Claims 15-19 and 21, which depend therefrom, the Danks et al. disclosure fails to disclose the requirements of Claim 14. Danks et al. does not disclose an obturator assembly of a trocar system wherein the obturator assembly includes a latch mechanism disposed generally within the obturator housing, the latch mechanism including a release member having a button portion extending distally in axial alignment with at least a portion of the proximally facing surface of the cannula and a camming surface, the button portion being moveable from a first a first position extending outwardly from the distally facing end surface of the obturator housing to a second position wherein the button is positioned further within the obturator housing, and a latch operatively associated with the release member, the latch having a blocking surface and a mating surface, the mating surface cooperating with the camming surface of the release member such that application of a proximally directed force to the distal end of the button portion of the release member of the obturator assembly to move to the second position to impart vertical movement of the release member whereby the camming surface moves substantially laterally and biases the mating

surface to move the latch such that the blocking surface permits axial movement of the shield, as recited in Claim 14.

There is no structure or portion of the obturator assembly 12 in Danks et al. "being moveable from a first position extending outwardly from the distally facing end surface of the obturator housing to a second position wherein the button is positioned further within the obturator housing." In contrast, the distal end 22 of the linking member 24 is moveable from a first position extending outwardly from the distally facing end surface of the obturator housing, (FIG. 3B) to a second position wherein the linking member 24 is "pulled forward," i.e. toward piercing tip 80. Column 4, lines 53-55.

Accordingly, Claim 14 and Claims 15-19, and 21, which depend therefrom, are believed to be unanticipated by, and otherwise allowable over, Danks et al. Therefore, reconsideration and withdrawal of the rejection is respectfully requested and allowance of the claims is earnestly solicited.

**Schwemberger et al.**

Claims 2-19 and 21 were rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,904,699 (Schwemberger et al.).

With regard to independent Claim 3 and Claims 2, 4-10, which depend therefrom, Schwemberger et al. fails to disclose the requirements of Claim 3. The Schwemberger et al. disclosure does not disclose an obturator assembly of a trocar system, wherein the obturator assembly includes a latch mechanism disposed generally within an obturator housing, the latch mechanism including a release member having a button portion and a camming surface; wherein the button portion protrudes at least partially through an opening formed in the distally facing

end surface of the obturator housing, the button portion being moveable from a first position extending outwardly from the distally facing end surface of the obturator housing to a second position wherein the button portion is positioned further within the obturator housing; and a latch operatively associated with the release member, the latch having a blocking surface and a mating surface, the mating surface cooperating with the camming surface of the release member such that application of a proximally directed force to the distal end of the button portion of the release member of the obturator assembly to move to the second position to impart vertical movement of the release member whereby the camming surface moves substantially laterally and biases the mating surface to move the latch such that the blocking surface permits axial movement of the shield, as recited in amended Claim 3.

In contrast, the trocar 30 in Schwemberger et al. includes an obturator assembly 50 having a precock lever 52 and obturator 53. Column 4, lines 56-57. Precock lever 52 does not protrude at least partially through an opening formed in the distally facing end surface of the obturator housing. Instead, precock lever 52 is pivotally mounted to the obturator handle 51. Column 7, lines 43-45.

Accordingly, Claim 3 and Claims 2, 4-10, which depend therefrom, are believed to be unanticipated by, and otherwise allowable over, Schwemberger et al. Therefore, reconsideration and withdrawal of the rejection is respectfully requested.

With regard to independent method Claim 11 and Claims 12-13, which depend therefrom, the Schwemberger et al. patent does not disclose a method of inserting a trocar assembly into a patient comprising the steps of approximating an obturator assembly with a cannula assembly such that a button portion of a release member is urged proximally and a camming surface of the release member imparts lateral movement of a blocking surface of a

latch such that the blocking surface is moved to permit relative movement of the shield and a penetrating tip of the obturator assembly; and inserting the trocar assembly through the body wall of a patient by pushing the trocar assembly toward the body wall such that a guard of the shield is urged proximally to reveal the penetrating tip and permit passage of the trocar assembly through the body wall, as recited in claim 11. In contrast, the penetrating tip or blade 61 in the Schwemberger et al. disclosure is revealed when "trocar 30 is precooked by depressing the distal end of the precock lever 52 inwardly. This motion unlocks the locking arm 138 that restricts the shield 55 from axial motion." Column 10, lines 30-40. As illustrated in FIGS. 17-20, the penetrating tip 61 is revealed upon inward depression of the distal end of procock lever 52, before inserting the trocar assembly through the body wall of a patient.

Accordingly, independent method Claim 11 and Claims 12-13, which depend therefrom, are believed to be unanticipated by, and otherwise allowable over, the Schwemberger et al. patent. Therefore, reconsideration and withdrawal of the rejection is respectfully requested and allowance of the claims is earnestly solicited.

With respect to independent Claim 14 and Claims 15-19 and 21, which depend therefrom, Schwemberger et al. fails to disclose the requirements of Claim 14. Schwemberger et al. does not disclose an obturator assembly of a trocar system wherein the obturator assembly includes a latch mechanism disposed generally within the obturator housing, the latch mechanism including a release member having a button portion extending distally in axial alignment with at least a portion of the proximally facing surface of the cannula and a camming surface, the button portion being moveable from a first a first position extending outwardly from the distally facing end surface of the obturator housing to a second position wherein the button is positioned further within the obturator housing; and a latch operatively associated with the

release member, the latch having a blocking surface and a mating surface, the mating surface cooperating with the camming surface of the release member such that application of a proximally directed force to the distal end of the button portion of the release member of the obturator assembly to move to the second position to impart vertical movement of the release member whereby the camming surface moves substantially laterally and biases the mating surface to move the latch such that the blocking surface permits axial movement of the shield, as recited in Claim 14.

In contrast, the trocar disclosed in the Schwemberger et al. patent includes a precock lever 52 being pivotally mounted in the obturator handle 51. Precock lever 52 includes an exterior lever face 57 which "provides an operator contact surface to unlock the sliding shield." Column 7, lines 45-47. No portion of precock lever 52 extends distally in axial alignment with at least a portion of the proximally facing surface of the cannula.

Accordingly, independent Claim 14 and Claims 15-19, 21, which depend therefrom, are believe to be unanticipated by, and otherwise allowable over, the Schwemberger et al. patent. Therefore, reconsideration and withdrawal of the rejection is respectfully requested and allowance of the claims is earnestly solicited.

**Holmes**

Claims 2-19 and 21 were rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,931,042 (Holmes et al.)

With regard to independent method Claim 11 and Claims 12-13, which depend therefrom, the Holmes et al. patent does not disclose a method of inserting a trocar assembly into a patient comprising the steps of approximating an obturator assembly with a cannula assembly

such that a button portion of a release member is urged proximally and a camming surface of the release member imparts lateral movement of a blocking surface of a latch such that the blocking surface is moved to permit relative movement of the shield and a penetrating tip of the obturator assembly; and inserting the trocar assembly through the body wall of a patient by pushing the trocar assembly toward the body wall such that a guard of the shield is urged proximally to reveal the penetrating tip and permit passage of the trocar assembly through the body wall, as recited in claim 11. In contrast to a camming surface or a release member imparting lateral movement of a blocking surface of a latch, trigger 40 in the Holmes et al. disclosure slides relative to head 16 along an axis parallel with the longitudinal axis of the shield and obturator. Column 2, lines 59-61.

Accordingly, independent method Claim 11 and Claims 12-13, which depend therefrom, are believed to be unanticipated by, and otherwise allowable over, the Holmes et al. patent. Therefore, reconsideration and withdrawal of the rejection is respectfully requested and allowance of the claims is earnestly solicited.

**Smith et al.**

Claims 2-19, and 21 were rejected under 35 U.S.C. 102(b) in view of US Patent No. 5,387,197 (Smith et al.).

With regard to independent Claim 3 and Claims 2, 4-10, which depend therefrom, Smith et al. fails to disclose the requirements of Claim 3. The Smith et al. disclosure does not disclose an obturator assembly of a trocar system, wherein the obturator assembly includes a latch mechanism disposed generally within an obturator housing, the latch mechanism including a release member having a button portion and a camming surface; wherein the button portion

protrudes at least partially through an opening formed in the distally facing end surface of the obturator housing, the button portion being moveable from a first position extending outwardly from the distally facing end surface of the obturator housing to a second position wherein the button portion is positioned further within the obturator housing; and a latch operatively associated with the release member, the latch having a blocking surface and a mating surface, the mating surface cooperating with the camming surface of the release member such that application of a proximally directed force to the distal end of the button portion of the release member of the obturator assembly to move to the second position to impart vertical movement of the release member whereby the camming surface moves substantially laterally and biases the mating surface to move the latch such that the blocking surface permits axial movement of the shield, as recited in amended Claim 3.

In contrast, the trocar 30 in Smith et al. includes an obturator assembly 170 having obturator handle 180, latch member 210 having lockout arm 230; and reset button 270. See generally Column 8, lines 18-45. There is no release member having a button portion, wherein the button portion protrudes at least partially through an opening formed in the distally facing end surface of the obturator housing, the button portion being moveable from a first position extending outwardly from the distally facing end surface of the obturator housing to a second position wherein the button portion is positioned further within the obturator housing. In contrast, "reset button 270 is slidably mounted in the top slots 183 of handle 180." Column 8, lines 66-67. Moreover, there is no lateral movement of a camming surface, as recited in Claim 3. Rather, "[m]oving the reset button 270 distally, causes the tab member 276 to engage the back side of the lockout arm 230, reset tabs 235, and cam the lockout arm 230 forward. This allows the knife collar 250 to move distally..." Column 9, lines 11-17.

Accordingly, independent Claim 3 and Claims 2, 4-10, which depend therefrom, are believed to be unanticipated by, and otherwise allowable over, Smith et al. Therefore, reconsideration and withdrawal of the rejection is respectfully requested.

With regard to independent method Claim 11 and Claims 12-13, which depend therefrom, the Smith et al. patent does not disclose a method of inserting a trocar assembly into a patient comprising the steps of approximating an obturator assembly with a cannula assembly such that a button portion of a release member is urged proximally and a camming surface of the release member imparts lateral movement of a blocking surface of a latch such that the blocking surface is moved to permit relative movement of the shield and a penetrating tip of the obturator assembly, as recited in claim 11. In contrast, "[p]rior to using trocar 20 [in Smith et al.], the surgeon arms the safety shield locking mechanism by displacing the reset button 270 in a distal axial direction." Column 11, lines 35-43.

Accordingly, independent method Claim 11 and Claims 12-13, which depend therefrom, are believed to be unanticipated by, and otherwise allowable over, the Smith et al. patent. Therefore, reconsideration and withdrawal of the rejection is respectfully requested and allowance of the claims is earnestly solicited.

With respect to independent Claim 14 and Claims 15-19 and 21, which depend therefrom, Smith et al. fails to disclose the requirement of Claim 14. Smith et al. does not disclose an obturator assembly of a trocar system wherein the obturator assembly includes a latch mechanism disposed generally within the obturator housing, the latch mechanism including a release member having a button portion extending distally in axial alignment with at least a portion of the proximally facing surface of the cannula and a camming surface, the button portion being moveable from a first a first position extending outwardly from the distally facing

end surface of the obturator housing to a second position wherein the button is positioned further within the obturator housing; and a latch operatively associated with the release member, the latch having a blocking surface and a mating surface, the mating surface cooperating with the camming surface of the release member such that application of a proximally directed force to the distal end of the button portion of the release member of the obturator assembly to move to the second position to impart vertical movement of the release member whereby the camming surface moves substantially laterally and biases the mating surface to move the latch such that the blocking surface permits axial movement of the shield, as recited in Claim 14.

In contrast, "reset button 270 is slidably mounted in the top slots 183 of handle 180." Column 8, lines 66-67. Moreover, both reset button 270 and lockout arm 230 are displaced in a distal axial direction. See Column 11, lines 38-43.

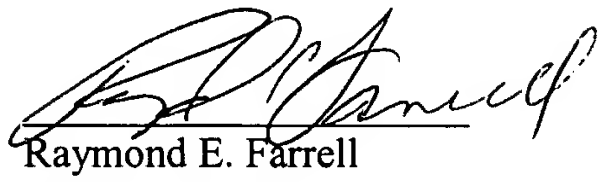
Accordingly, independent Claim 14 and Claims 15-19, 21, which depend therefrom, are believe to be unanticipated by, and otherwise allowable over, the Smith et al. patent. Therefore, reconsideration and withdrawal of the rejection is respectfully requested and allowance of the claims is earnestly solicited.

**Conclusion**

In view of the foregoing amendments and remarks, it is respectfully submitted that none of the references of record, considered individually or in combination, in whole or in part, disclose or suggest the present invention as claimed. Therefore, all Claims now pending and not withdrawn in this application, namely Claims 2-21, are now in condition for allowance. Accordingly, early and favorable consideration of this application is respectfully requested. Should the Examiner believe that a telephone or personal interview may facilitate resolution of

any remaining matters, he is respectfully requested to contact Applicant's undersigned attorney at the telephone number indicated below.

Respectfully Submitted,



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